

AMENDED IN ASSEMBLY APRIL 25, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 521**

**Introduced by Assembly Member Sharon Runner**

February 16, 2005

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*An act to amend Section 1872.83 of the Insurance Code, and to amend Sections 3820 and 3822 of, and to repeal Section 62.6 of, the Labor Code, relating to workers' compensation.*

LEGISLATIVE COUNSEL'S DIGEST

AB 521, as amended, Sharon Runner. Workers' compensation: ~~fraud. Fraud Assessment Commission.~~

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.

~~This bill would declare that it is the intent of the Legislature to enact legislation that would reform the workers' compensation system in the area of fraud assessment.~~

*Existing law requires the Director of Industrial Relations to levy and collect assessments from employers that are deposited in the Workers' Compensation Fraud Account in the Insurance Fund, which is only expended, upon appropriation by the Legislature, for the investigation and prosecution of workers' compensation fraud and the willful failure to secure payment of workers' compensation. Existing law establishes the Fraud Assessment Commission, composed of 7 appointed members, to determine the aggregate amount of this assessment.*

*This bill would eliminate the commission and would repeal the requirement that an assessment for workers' compensation fraud be*

levied by the director. It would also make various technical and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1872.83 of the Insurance Code is  
2     amended to read:

3     1872.83. (a) The commissioner shall ensure that the Bureau  
4     of Fraudulent Claims aggressively pursues all reported incidents  
5     of probable workers' compensation fraud, as defined in Sections  
6     11760 and 11880, in subdivision (a) of Section 1871.4, and in  
7     Section 549 of the Penal Code, and forwards to the appropriate  
8     disciplinary body the names, along with all supporting evidence,  
9     of any individuals licensed under the Business and Professions  
10    Code who are suspected of actively engaging in fraudulent  
11    activity. The Bureau of Fraudulent Claims shall forward to the  
12    Insurance Commissioner or the Director of Industrial Relations,  
13    as appropriate, the name, along with all supporting evidence, of  
14    any insurer, as defined in subdivision (c) of Section 1877.1,  
15    suspected of actively engaging in the fraudulent denial of claims.

16    ~~(b) To fund increased investigation and prosecution of~~  
17    ~~workers' compensation fraud, and of willful failure to secure~~  
18    ~~payment of workers' compensation, in violation of Section~~  
19    ~~3700.5 of the Labor Code, there shall be an annual assessment as~~  
20    ~~follows:~~

21    ~~(1) The aggregate amount of the assessment shall be~~  
22    ~~determined by the Fraud Assessment Commission, which is~~  
23    ~~hereby established. The commission shall be composed of seven~~  
24    ~~members consisting of two representatives of organized labor,~~  
25    ~~two representatives of self-insured employers, one representative~~  
26    ~~of insured employers, one representative of workers'~~  
27    ~~compensation insurers, and the President of the State~~  
28    ~~Compensation Insurance Fund, or his or her designee.~~

29    ~~The Governor shall appoint members representing organized~~  
30    ~~labor, self-insured employers, insured employers, and insurers.~~  
31    ~~The term of office of members of the commission shall be four~~  
32    ~~years, and a member shall hold office until the appointment of a~~  
33    ~~successor. The President of the State Compensation Insurance~~

~~Fund shall be an ex officio, voting member of the commission. Members of the commission shall receive one hundred dollars (\$100) for each day of actual attendance at commission meetings and other official commission business, and shall also receive their actual and necessary traveling expenses incurred in the performance of commission duties. Payment of per diem and travel expenses shall be made from the Workers' Compensation Fraud Account in the Insurance Fund, established in paragraph (4), upon appropriation by the Legislature.~~

~~(2) In determining the aggregate amount of the assessment, the Fraud Assessment Commission shall consider the advice and recommendations of the Bureau of Fraudulent Claims and the commissioner.~~

~~(3) The aggregate amount of the assessment shall be collected by the Director of Industrial Relations pursuant to Section 62.6 of the Labor Code. The Fraud Assessment Commission shall annually advise the Director of Industrial Relations, not later than March 15, of the aggregate amount to be assessed for the next fiscal year.~~

~~(4) The amount collected, together with the~~  
*(b) The* fines collected for violations of the unlawful acts specified in Sections 1871.4, 11760, and 11880, Section 3700.5 of the Labor Code, and Section 549 of the Penal Code, shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund, which is hereby created, and may be used, upon appropriation by the Legislature, only for enhanced investigation and prosecution of workers' compensation fraud and of willful failure to secure payment of workers' compensation as provided in this section.

~~(c) For each fiscal year, the total amount of revenues derived from the assessment pursuant to subdivision (b) shall, together with amounts collected pursuant to fines imposed for unlawful acts described in Sections 1871.4, 11760, and 11880, Section 3700.5 of the Labor Code, and Section 549 of the Penal Code, shall not be less than three million dollars (\$3,000,000). Any funds appropriated by the Legislature pursuant to subdivision (b) that are not expended in the fiscal year for which they have been appropriated, and that have not been allocated under subdivision (f), shall be applied to satisfy for the immediately following fiscal year the minimum total amount required by this~~

~~subdivision. In no case may that money be transferred to the General Fund.~~

(d) After incidental expenses, at least 40 percent of the funds to be used for the purposes of this section shall be provided to the Bureau of Fraudulent Claims of the Department of Insurance for enhanced investigative efforts, and at least 40 percent of the funds shall be distributed to district attorneys, pursuant to a determination by the commissioner with the advice and consent of the bureau ~~and the Fraud Assessment Commission~~, as to the most effective distribution of moneys for purposes of the investigation and prosecution of workers' compensation fraud cases and cases relating to the willful failure to secure the payment of workers' compensation. Each district attorney seeking a portion of the funds shall submit to the commissioner an application setting forth in detail the proposed use of any funds provided. A district attorney receiving funds pursuant to this subdivision shall submit an annual report to the commissioner with respect to the success of his or her efforts. Upon receipt, the commissioner shall provide copies to the bureau ~~and the Fraud Assessment Commission~~ of any application, annual report, or other documents with respect to the allocation of money pursuant to this subdivision. Both the application for moneys and the distribution of moneys shall be public documents. Information submitted to the commissioner pursuant to this section concerning criminal investigations, whether active or inactive, shall be confidential.

(e) If a district attorney is determined by the commissioner to be unable or unwilling to investigate and prosecute workers' compensation fraud claims or claims relating to the willful failure to secure the payment of workers' compensation, the commissioner shall discontinue distribution of funds allocated for that county and may redistribute those funds according to this subdivision.

(1) The commissioner shall promptly determine whether any other county could assert jurisdiction to prosecute the fraud claims or claims relating to the willful failure to secure the payment of workers' compensation that would have been brought in the nonparticipating county, and if so, the commissioner may award funds to conduct the prosecutions redirected pursuant to this subdivision. These funds may be in addition to any other

1 fraud prosecution funds or claims relating to the willful failure to  
2 secure the payment of workers' compensation prosecution  
3 otherwise awarded under this section. Any district attorney  
4 receiving funds pursuant to this subdivision shall first agree that  
5 the funds shall be used solely for investigating and prosecuting  
6 those cases of workers' compensation fraud or claims relating to  
7 the willful failure to secure the payment of workers'  
8 compensation that are redirected pursuant to this subdivision and  
9 submit an annual report to the commissioner with respect to the  
10 success of the district attorney's efforts. ~~The commissioner shall~~  
11 ~~keep the Fraud Assessment Commission fully informed of all~~  
12 ~~reallocations of funds under this paragraph.~~

13 (2) If the commissioner determines that no district attorney is  
14 willing or able to investigate and prosecute the workers'  
15 compensation fraud claims or claims relating to the willful failure  
16 to secure the payment of workers' compensation arising in the  
17 nonparticipating county, the commissioner, ~~with the advice and~~  
18 ~~consent of the Fraud Assessment Commission,~~ may award to the  
19 Attorney General some or all of the funds previously awarded to  
20 the nonparticipating county. Before the commissioner may award  
21 any funds, the Attorney General shall submit to the  
22 commissioner an application setting forth in detail his or her  
23 proposed use of any funds provided and agreeing that any funds  
24 awarded shall be used solely for investigating and prosecuting  
25 those cases of workers' compensation fraud or claims relating to  
26 the willful failure to secure the payment of workers'  
27 compensation that are redirected pursuant to this subdivision.  
28 The Attorney General shall submit an annual report to the  
29 commissioner with respect to the success of the fraud prosecution  
30 efforts of his or her office.

31 (3) Neither the Attorney General nor any district attorney shall  
32 be required to relinquish control of any investigation or  
33 prosecution undertaken pursuant to this subdivision unless the  
34 commissioner determines that satisfactory progress is no longer  
35 being made on the case or the case has been abandoned.

36 (4) A county that has become a nonparticipating county due to  
37 the inability or unwillingness of its district attorney to investigate  
38 and prosecute workers' compensation fraud or the willful failure  
39 to secure the payment of workers' compensation shall not  
40 become eligible to receive funding under this section until it has

1 submitted a new application that meets the requirements of  
2 subdivision (d) and the applicable regulations.

3 (f) If in any fiscal year the Bureau of Fraudulent Claims does  
4 not use all of the funds made available to it under subdivision (d),  
5 any remaining funds may be distributed to district attorneys  
6 pursuant to a determination by the commissioner in accordance  
7 with the same procedures set forth in subdivision (d).

8 (g) The commissioner shall adopt rules and regulations to  
9 implement this section in accordance with the rulemaking  
10 provisions of the Administrative Procedure Act (Chapter 3.5  
11 (commencing with Section 11340) of Part 1 of Division 3 of Title  
12 2 of the Government Code). Included in the rules and regulations  
13 shall be the criteria for redistributing funds to district attorneys  
14 and the Attorney General. The adoption of the rules and  
15 regulations shall be deemed to be an emergency and necessary  
16 for the immediate preservation of the public peace, health, and  
17 safety, or general welfare.

18 (h) The department shall report on an annual basis to the  
19 Legislature ~~and the Fraud Assessment Commission~~ on the  
20 activities of the Bureau of Fraudulent Claims and district  
21 attorneys supported by the funds provided by this section.

22 The annual report shall include, but is not limited to, all of the  
23 following information for the department and each district  
24 attorney's office:

25 (1) All allocations, distributions, and expenditures of funds.

26 (2) The number of search warrants issued.

27 (3) The number of arrests and prosecutions, and the aggregate  
28 number of parties involved in each.

29 (4) The number of convictions and the names of all convicted  
30 fraud perpetrators.

31 (5) The estimated value of all assets frozen, penalties assessed,  
32 and restitutions made for each conviction.

33 (6) Any additional items necessary to fully inform the ~~Fraud~~  
34 ~~Assessment Commission~~ and the Legislature of the  
35 fraud-fighting efforts financed through this section.

36 (i) In order to meet the requirements of subdivision (g), the  
37 department shall submit a biannual information request to those  
38 district attorneys who have applied for and received funding  
39 through the annual assessment process under this section.

(j) Assessments levied or collected to fight workers' compensation fraud and insurance fraud are not taxes. Those funds are entrusted to the state to fight fraud and the willful failure to secure the payment of workers' compensation by funding state and local investigation and prosecution efforts. Accordingly, any funds resulting from assessments, fees, penalties, fines, restitution, or recovery of costs of investigation and prosecution deposited in the Insurance Fund shall not be deemed "unexpended" funds for any purpose and, if remaining in that account at the end of any fiscal year, shall be applied as provided in subdivision (f) and to offset or augment subsequent years' program funding.

(k) The Bureau of State Audits shall evaluate the effectiveness of the efforts of ~~the Fraud Assessment Commission~~, the Bureau of Fraudulent Claims, the Department of Insurance, and the Department of Industrial Relations, as well as local law enforcement agencies, including district attorneys, in identifying, investigating, and prosecuting workers' compensation fraud and the willful failure to secure payment of workers' compensation. The report shall specifically identify areas of deficiencies. Included in this report shall be recommendations on whether the current program provides the appropriate levels of accountability for those responsible for the allocation and expenditure of funds raised from the assessment provided in this section. The Bureau of State Audits shall submit a report to the Chairperson of the Senate Committee on Labor and Industrial Relations and the Chairperson of the Assembly Committee on Insurance on or before May 1, 2004.

*SEC. 2. Section 62.6 of the Labor Code is repealed.*

~~62.6. (a) The director shall levy and collect assessments from employers in accordance with subdivision (b), as necessary, to collect the aggregate amount determined by the Fraud Assessment Commission pursuant to Section 1872.83 of the Insurance Code. Revenues derived from the assessments shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund and shall only be expended, upon appropriation by the Legislature, for the investigation and prosecution of workers' compensation fraud and the willful failure to secure payment of workers' compensation, as prescribed by Section 1872.83 of the Insurance Code.~~

~~(b) Assessments shall be levied by the director upon all employers as defined in Section 3300. The total amount of the assessment shall be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall promulgate reasonable rules and regulations governing the manner of collection of the assessment. The rules and regulations shall require the assessment to be paid by self-insurers to be expressed as a percentage of indemnity paid during the most recent year for which information is available, and the assessment to be paid by insured employers to be expressed as a percentage of premium. In no event shall the assessment paid by insured employers be considered a premium for computation of a gross premium tax or agents' commission.~~

*SEC. 3. Section 3820 of the Labor Code is amended to read:*

3820. (a) In enacting this section, the Legislature declares that there exists a compelling interest in eliminating fraud in the workers' compensation system. The Legislature recognizes that the conduct prohibited by this section is, for the most part, already subject to criminal penalties pursuant to other provisions of law. However, the Legislature finds and declares that the addition of civil money penalties will provide necessary enforcement flexibility. The Legislature, in exercising its plenary authority related to workers' compensation, declares that these sections are both necessary and carefully tailored to combat the fraud and abuse that is rampant in the workers' compensation system.

(b) It is unlawful to do any of the following:

(1) Willfully misrepresent any fact in order to obtain workers' compensation insurance at less than the proper rate.

(2) Present or cause to be presented any knowingly false or fraudulent written or oral material statement in support of, or in opposition to, any claim for compensation for the purpose of obtaining or denying any compensation, as defined in Section 3207.

(3) Knowingly solicit, receive, offer, pay, or accept any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for soliciting or referring clients or patients to obtain services or benefits pursuant

1 to Division 4 (commencing with Section 3200) unless the  
2 payment or receipt of consideration for services other than the  
3 referral of clients or patients is lawful pursuant to Section 650 of  
4 the Business and Professions Code or expressly permitted by the  
5 Rules of Professional Conduct of the State Bar.

6 (4) Knowingly operate or participate in a service that, for  
7 profit, refers or recommends clients or patients to obtain medical  
8 or medical-legal services or benefits pursuant to Division 4  
9 (commencing with Section 3200).

10 (5) Knowingly assist, abet, solicit, or conspire with any person  
11 who engages in an unlawful act under this section.

12 (c) For the purposes of this section, “statement” includes, but  
13 is not limited to, any notice, proof of injury, bill for services,  
14 payment for services, hospital or doctor records, X-ray, test  
15 results, medical-legal expenses as defined in Section 4620, or  
16 other evidence of loss, expense, or payment.

17 (d) Any person who violates any provision of this section shall  
18 be subject, in addition to any other penalties that may be  
19 prescribed by law, to a civil penalty of not less than four  
20 thousand dollars (\$4,000) nor more than ten thousand dollars  
21 (\$10,000), plus an assessment of not more than three times the  
22 amount of the medical treatment expenses paid pursuant to  
23 Article 2 (commencing with Section 4600) and medical-legal  
24 expenses paid pursuant to Article 2.5 (commencing with Section  
25 4620) for each claim for compensation submitted in violation of  
26 this section.

27 (e) Any person who violates subdivision (b) and who has a  
28 prior felony conviction of an offense set forth in Section 1871.1  
29 or 1871.4 of the Insurance Code, or in Section 549 of the Penal  
30 Code, shall be subject, in addition to the penalties set forth in  
31 subdivision (d), to a civil penalty of four thousand dollars  
32 (\$4,000) for each item or service with respect to which a  
33 violation of subdivision (b) occurred.

34 (f) The penalties provided for in subdivisions (d) and (e) shall  
35 be assessed and recovered in a civil action brought in the name of  
36 the people of the State of California by any district attorney.

37 (g) In assessing the amount of the civil penalty the court shall  
38 consider any one or more of the relevant circumstances presented  
39 by any of the parties to the case, including, but not limited to, the  
40 following: the nature and seriousness of the misconduct, the

1 number of violations, the persistence of the misconduct, the  
2 length of time over which the misconduct occurred, the  
3 willfulness of the defendant's misconduct, and the defendant's  
4 assets, liabilities, and net worth.

5 (h) All penalties collected pursuant to this section shall be paid  
6 to the Workers' Compensation Fraud Account in the Insurance  
7 Fund pursuant to Section 1872.83 of the Insurance Code. All  
8 costs incurred by district attorneys in carrying out this article  
9 shall be funded from the Workers' Compensation Fraud Account.  
10 It is the intent of the Legislature that the program instituted by  
11 this article be supported entirely from funds produced by moneys  
12 deposited into the Workers' Compensation Fraud Account from  
13 the imposition of civil money penalties for workers'  
14 compensation fraud collected pursuant to this section. ~~All~~  
15 ~~moneys claimed by district attorneys as costs of carrying out this~~  
16 ~~article shall be paid pursuant to a determination by the Fraud~~  
17 ~~Assessment Commission established by Section 1872.83 of the~~  
18 ~~Insurance Code and on appropriation by the Legislature.~~

19 *SEC. 4. Section 3822 of the Labor Code is amended to read:*

20 3822. The administrative director shall, on an annual basis,  
21 provide to every employer, claims adjuster, third party  
22 administrator, physician, and attorney who participates in the  
23 workers' compensation system, a notice that warns the recipient  
24 against committing workers' compensation fraud. The notice  
25 shall specify the penalties that are applied for committing  
26 workers' compensation fraud. ~~The Fraud Assessment~~  
27 ~~Commission, established by Section 1872.83 of the Insurance~~  
28 ~~Code, shall provide the administrative director with all funds~~  
29 ~~necessary to carry out this section.~~

30 ~~SECTION 1. It is the intent of the Legislature to enact~~  
31 ~~legislation in subsequent amendments that would reform the~~  
32 ~~workers' compensation system in the area of fraud assessment.~~